

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EVAN G.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,
Service Agency.

OAH Case No. L 2007010479

OAH Case No. L 2007020214

DECISION

These consolidated matters were heard on March 13, 2007, in Culver City, California, by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Adriana G., mother, and Isaac G., father, represented the Claimant¹ and are also his conservators.

Lisa Basiri, Fair Hearing Coordinator, represented the Westside Regional Center (Service Agency).

Evidence was received, the record was closed, and the matters were submitted on March 13, 2007.

ISSUES

The following issues are to be determined:

1. Should the Service Agency reimburse Claimant's parents for the cost of establishing a conservatorship for Claimant?
2. Should the Service Agency place Claimant at the Fairview Developmental Center?

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¹ Initials are used to protect the confidentiality of Claimant and his family.

3. Should the Service Agency reimburse Claimant's parents for the cost of supportive services until completion of the placement of Claimant at the Fairview Developmental Center?

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant's date of birth is April 12, 1988, and he is now 18 years old. He is eligible for services from the Service Agency due to conditions of autism and mental retardation.

2. On November 13, 2006, Claimant's parents asked the Service Agency pay the costs for conservatorship proceedings for Claimant. In a Notice of Proposed Action dated December 6, 2006, the Service Agency denied the request for reimbursement of the conservatorship expenses. Claimant's Request for Fair Hearing relating to that denial was dated December 22, 2006.

3. On September 21, 2006, Claimant's parents made a verbal request that the Service Agency place Claimant at Fairview Developmental Center. In a Notice of Proposed Action dated January 26, 2007, the Service Agency denied that request. Claimant's Request for Fair Hearing relating to that denial was dated January 28, 2007.

Background of the Requests for Services and the Denials

4. In addition to the developmental disabilities of autism and mental retardation, Claimant also suffers from mental health problems of moderate depression and obsessive compulsive disorder.

5. When Claimant was age 9, he exhibited aggression and other behaviors that motivated his parents to make the difficult decision to look for residential placement for him. This decision was supported by a letter from Claimant's psychiatrist, Dr. Steven Schenkel. (Exhibit C-1.) Thereafter, for approximately nine years, Claimant was a resident at and received services from the Devereux Foundation program in Santa Barbara, California. It was expected that Claimant would remain there until he turned 22 and would, thereby, no longer be eligible for services from Devereux. During annual meetings there, Claimant's parents were told that it was not necessary for Claimant to have a conservator while he was at Devereux, but that it should be considered at the end of his stay there.

6. With little notice, Devereux closed effective June 30, 2006, and it was necessary for Claimant to relocate. The notification to Claimant's parents that Devereux would close was only about 30 days prior to closure. Claimant's parents started the process of

determining a residential placement for Claimant, and commenced conservatorship proceedings for him.

7. As of June 30, 2006, the Service Agency approved Claimant's placement with the Exceptional Children's Foundation at the Valverde House facility (Valverde) in Reseda, California. On July 1, 2006, the Service Agency approved a 1:1 aide for 10 hours per day on weekdays and 16 hours per day on weekends. This service was added because Claimant's behaviors and needs necessitated a higher level of attention and staffing than was normally available at Valverde. Because the cost of the 1:1 aide exceeded the funding provided by the Service Agency, Claimant's parents agreed with Valverde to pay the cost difference. It was hoped that, with training, Claimant's adverse behaviors would be reduced, as would the need for a 1:1 aide. (Exhibit 3.) Ultimately, Claimant's parents refused to pay the difference, and arrangements were made to increase the hourly amount that the Service Agency would pay for the 1:1 aide. Also, Valverde agreed to waive the extra costs due from the parents. Claimant was attending Leichman High School in the special education program. An Individual Program Plan prepared by Valverde staff, dated August 2, 2006, noted that Claimant was not capable of giving informed consent and that his parents were pursuing a conservatorship. (Exhibit 4.) An initial behavioral assessment dated August 2, 2006 (Exhibit 4), by Dr. Maurice Cayem, a psychologist, noted that Claimant had exhibited little effort while engaged in speech and occupational therapies while at Devereux and had become very prompt dependent. While at Devereux there was little improvement in Claimant's ability to be independent; rather, he was "deeply entrenched into his ritualistic behaviors and resistant to anything that interferes with that." In Dr. Cayem's opinion, Claimant's dependence on prompts was not likely to fade easily or quickly, if at all.

8. In July 2006, Claimant's parents initiated legal proceedings to become Claimant's conservators. The Service Agency submitted a report to the court, as required under Probate Code section 1827.5. (Exhibit 13 and Exhibit C-4.) The report generally agreed with the establishment of a limited conservatorship and recommended that Claimant's parents be appointed to act as conservators, but the report disagreed with that portion of the petition in which the parents requested the power to control Claimant's right to marry (as there was no history of relationships of this type) and the power to control Claimant's "social and sexual contacts and relations" (as there was no history of behaviors requiring such a limitation on Claimant). Claimant's parents' letter, dated September 15, 2006 (Exhibit C-7), responded to these positions of the Service Agency and detailed their concerns over Claimant's vulnerability to being taken advantage of by people expressing an interest in friendship or marriage.

On October 18, 2006, the Court issued an order appointing Claimant's parents as limited conservators, and letters of conservatorship were filed on October 31, 2006. (Exhibits 13 and C-11.) The letters of conservatorship include the two categories to which the Service Agency objected.

9. Claimant's parents submitted evidence of the costs of establishing the conservatorship as follows: attorneys' fees of \$3,360 (Exhibits C-5, C-8 and C-10); court filing fee of \$799 (Exhibit C-6); and court costs of \$82.50 for issuance of the letters of limited conservatorship (Exhibit C-9). Therefore, Claimant's parents proved that their costs for legal fees and court costs for the conservatorship were \$4,141.50. All of the fees and costs were incurred by the end of October 2006.

10. The Service Agency denied the request for reimbursement based on the contention that the conservatorship proceeding was a choice of the parents. Further, at the hearing, the Service Agency noted that there had been no request by Claimant that the Service Agency provide legal services or funds for legal services prior to the Claimant's parents hiring the lawyer or paying the fees.

11. Claimant was involved in an incident on August 26, 2006, where he threw a female staffperson onto a couch and hit members of the staff. A 911 call was made by the staff; and due to his violent behavior, Claimant was involuntarily hospitalized. Claimant was released from the hospital on September 5, 2006, and returned to Valverde. Claimant was given a 30-day notice to move from Valverde based on his aggressive behavior, his leaving the facility unescorted, his grabbing food from others, and his tantrums/disruptive behavior. (Exhibit 3.) A behavioral assessment by Dr. Cayem, dated October 17, 2006 (Exhibit 4), noted that Claimant's psychiatrist had ceased providing services to him because of the interference by Claimant's father, a physician, during the hospitalization. Claimant's behaviors were such that Dr. Caymen opined that Valverde was not an appropriate placement for him.

12. Although he was supposed to leave Valverde by November 1, 2006, Claimant remained there for much longer more than 30 days, while other placements were being sought. A behavioral assessment by Dr. Cayem, dated December 15, 2006 (Exhibit 4), noted that, while at Devereux, Claimant had been able to move around the large campus but he was much more restricted by the physical set up and the types of other residents and staff at Valverde. Dr. Caymen recommended that Claimant be placed in a large institution, similar to Devereux, where, over time, staff could work on acclimating Claimant to spending more time indoors and in a more limited residential setting. Dr. Caymen agreed with Claimant's parents and recommend placing Claimant at a state hospital development center. The staff at Valverde continued to urge Claimant's placement at another facility, noting that his psychotropic medication needed to be adjusted to address his inappropriate behaviors and that Claimant would elope from the facility and elude staff, with no apparent appreciation of the dangers of traffic in the community. (Exhibit 5.)

13. On October 31, 2006, the Service Agency notified Claimant's parents that Claimant's eligibility for services at Fairview Developmental Center (FDC) would be

assessed by a team that would visit Claimant at Valverde on November 6, 2006. Although Claimant's parents were unable to attend the assessment, one of the assessors spoke to Claimant's father on November 20, 2006, and obtained his input, which was memorialized in a letter dated January 23, 2007. (Exhibit 2 and Exhibit C-21.)

14. The assessment for eligibility for placement at FDC was performed under the provisions of Welfare and Institutions Code section 4418.7, which states, in pertinent part:

“(a) If the regional center determines . . . that the community placement of a consumer is at risk of failing, and that admittance to a state developmental center is a likelihood, the regional center shall immediately notify the appropriate regional resource development project, the consumer, and the consumer's parents, legal guardian, or conservator.

“(b) In these cases, the regional resource development project shall immediately arrange for an assessment of the situation, including, visiting the consumer, if appropriate, determining barriers to successful integration, and recommending the most appropriate means necessary to assist the consumer to remain in the community. If, based on the assessment, the regional resource development project determines that additional or different services and supports are necessary, the department shall ensure that the regional center provides those services and supports on an emergency basis. An individual program plan meeting, including the regional resource development project's representative, shall be convened as soon as possible to review the emergency services and supports and determine the consumer's ongoing needs for services and supports. The regional resource development project shall follow up with the regional center as to the success of the recommended interventions until the consumer's living arrangement is stable.

“(c) If the regional resource development project, in consultation with the regional center, the consumer, and the consumer's parents, legal guardian, or conservator, when appropriate, determines that admittance to a state developmental center is necessary to prevent a substantial risk to the individual's health and safety, the regional resource development project shall immediately facilitate that admission.”

15. In this case, the appropriate regional resource developmental project was the South Coast Regional Project (SCRCP). The SCRCP assessment report is dated November 6, 2006, and was prepared by Sue Haddock. (Exhibit 2.) Also participating in the process were the service coordinator from the Service Agency, an administrator and staff member at Valverde, three psychologists and a residence manager (perhaps associated with FDC, however the evidence is not clear), and Claimant. The report notes Claimant's aggression toward others, hospitalization, property destruction, elopement, and food stealing. It includes sections on observation of Claimant, diagnoses, levels of self-help skills and communication skills, medical conditions and treatments, challenging behaviors, school program, successful

interventions, and recommendations.

As a result of the assessment, SCRP concluded that Claimant did not “require the highly restrictive setting of a Developmental Center at this time.” Rather, it recommended that he be placed in a small group home (3-4 residents) with a strong behavioral component and with staff who are familiar with persons with autism and their communication issues. The report also mentioned that proximity to a park would be helpful and that similarly aged peers might be better able to deal with Claimant’s aggressiveness. Similarly, staff should be trained to deal appropriately with aggressive behavior. Numerous other recommendations dealt with Claimant’s medical and physical situations.

16. In a letter to SCRP written after the assessment (Exhibit C-13), Claimant’s father wrote that there were many inaccuracies in the report and took the position that, as Claimant’s conservators, he and his wife should make the decision of whether FDC is an appropriate placement. The letter included information about Claimant’s success in his school program, and asked for help from SCRP in transferring Claimant’s case from the Service Agency to the North Los Angeles Regional Center. In the letter, Claimant’s father also contended that the conclusion that Claimant is not eligible for placement at FDC is not supported by the report’s findings that Claimant is aggressive, that he hits walls, and that the Valverde staff is “petrified” of him. Claimant’s father asked for a tour of FDC to be arranged.

17. On December 21, 2007, the Clinical Director of FDC, Dwayne LaFon, responded by letter (Exhibit C-15), indicating that a meeting scheduled in January, including SCRP, the Service Agency, Valverde staff and Claimant’s parents, would provide an opportunity for discussion, and possible updating of the assessment report. Mr. LaFon noted that Ms. Haddock had taken notes of the concerns of Claimant’s father expressed in their phone conversation. Mr. LaFon explained that the primary purpose of the Section 4418.7 assessment “is to determine barriers to successful community integration and to determine if additional or different services and supports are necessary Admittance to a state developmental center is included in consideration principally when necessary to prevent substantial risk to the individual’s health and safety.” Mr. LaFon noted that an assessment report may include a recommendation for placement in a state developmental center, but also may not. Further, Mr. LaFon stated that it was not within his authority to assist in a transfer from one regional center to another and that a tour of FDC could be arranged. He concluded with the hope that Claimant’s parents, the Service Agency and the other participants in the January meeting could work “to find the most appropriate, least restrictive living arrangements” for Claimant.

18. A meeting was held at the Service Agency on January 19, 2007, to discuss the assessment report and the recommendations. Claimant’s parents were concerned that their input was not reflected in the report. This concern was one reason that the parents’ input was

included in the letter dated January 23, 2007 (see Findings 13 and 17, above), including additional information on the reasons that Valverde is not an appropriate placement for Claimant and further justification for the parents' desire for placement at FDC.

The meeting participants concurred that Claimant was not safe at Valverde and that a more appropriate placement was needed. The Service Agency made suggestions of other possible placements. However, Claimant's parents stated their conclusion that the only acceptable placement of Claimant was at FDC.

19. In a follow up to the meeting, Claimant's father wrote a letter, dated January 20, 2007 (Exhibit C-20), which summarized the reasons for Claimant's parents' desire that Claimant be placed at FDC, which included the statements of Valverde staff that Claimant was not appropriate for Valverde and the opinion of Dr. Cayem that no community placement would be appropriate for Claimant, as well as his conclusion that the developmental center would be appropriate. The father's letter further stated that the assessment report by SCRP failed to note that: (1) although the Service Agency had sent requests to other regional centers for assistance in identifying possible placements for Claimant, no placement options had been received in response; (2) Claimant would be physically unsafe in a community placement; and (3) the conclusion of the assessment report, i.e., that Claimant should not be placed at FDC, was inconsistent with the findings of the report. The letter also directed the Service Agency to petition the court "to implement these recommendations."

20. On January 23, 2007, SCRP issued an addendum to the assessment report (Exhibit C-21), which included information or comments from Claimant's father on the following items: the beneficial effect on Claimant of the large campus setting at Devereux; that Claimant left the Valverde facility twice in July 2006 and had no "street safety" awareness skills; the family's desire for a transfer to another regional center; the family's displeasure regarding Claimant's treatment during his hospitalization in August 2006; the family's opinion that they were not given appropriate placement options before Claimant's admission to Valverde; the family's observation that Valverde staff did not understand how to support a person with autism; and the age difference between Claimant and his housemates at Valverde who were much older than he and were not a compatible peer group.

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The addendum also referred to the January 19th meeting and contained comments relating to: Claimant's father's concern that his input had not been included in the assessment report (which was resolved by summarizing that input in the addendum); the agreement of all participants that Claimant needed another residential placement (the Service Agency "identified some possibilities with the family"); the family's conclusion that Claimant "shall live" at FDC; and that the Service Agency "reviewed the mandate for a HOP or 6500 commitment which would require testimony that no other living arrangement was available".²

21. The Service Agency sent a letter to Claimant's parents, dated February 27, 2007, suggesting four specific residential placements in group homes, as well as offering to provide support services if Claimant were to live with his parents, and offering to provide general supported living services on a 24-hour per day basis at an agency and location of the parents' choice. The Service Agency also had pursued the request to transfer Claimant's case to the North Los Angeles Regional Center; however that request had been denied by the North Los Angeles Regional Center. The Service Agency also contacted three other regional centers to see if they had any recommended placements for Claimant. The Service Agency performed a statewide search to develop options for Claimant's placement. (Exhibit 10.)

22. The evidence makes clear that Claimant's parents will refuse to cooperate in any residential placement for Claimant other than at FDC.

23. Claimant was again hospitalized on February 22, 2007, at Olive View Medical Center. Apparently a 911 call had been made before the involuntary hospitalization. There was no evidence of what incidents or behavior of Claimant resulted in the hospitalization or of who made the 911 call. Claimant was held in the emergency room for several days while admission was sought in the locked psychiatric care facility, where he was transferred at a time not established by the evidence. As of the date of the hearing, Claimant was still in the hospital's locked psychiatric care facility. There was an indication in the evidence that Valverde will not allow Claimant to return as a resident.

24. On February 26, 2007, Claimant's mother informed the Service Agency of their request to temporarily place Claimant at a developmental center. That day, the Service Agency had found a vacant bed at Harrison Home within the Service Agency's service area, and a possible vacancy at another home. (Exhibit 8.) Claimant's parents would not agree to these placements, or to Claimant's living in their home with 24-hour support by the Service

² There was no other evidence of the meaning of the references to "HOP" or "6500 commitment." Independent research reveals a procedure under Welfare and Institutions Code section 6500 et seq. for mentally retarded persons to be committed to the Department of Developmental Services under certain conditions.

Agency.

25. With respect to Issue no. 3, there was no evidence of what “supportive services” were or are being rendered to Claimant and what costs to Claimant or his family are being accrued, for the period until Claimant is placed at FDC, for which Claimant should be reimbursed.

26. The Service Agency contends that, because the SCRP assessment report recommends that placement of Claimant at FDC is not appropriate, there is no further action it can take to place Claimant at FDC.

LEGAL CONCLUSIONS AND DISCUSSION

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Throughout the applicable statutes and regulations (Welfare and Institutions Code sections 4700 - 4716, and California Code of Regulations, title 17 (CCR), sections 50900 - 50964)³, the state level fair hearing is referred to as an appeal of the regional center’s decision. Particularly in this instance, where Claimant seeks to obtain different levels of services than are presently being provided, Claimant has the burden of proof to establish that he is entitled to the levels of services he seeks. (See Evid. Code §§ 115 and 500.)

2. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an Individual Program Plan (IPP) designed to promote as normal a life as possible. (Code § 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client’s developmental needs), contain a statement of time-limited objectives for improving the client’s situation, and reflect the client’s particular desires and preferences. (Code §§ 4646; 4646.5, subds. (a)(1), (a)(2) and (a)(4); 4512, subd. (b); and 4648, subd. (a)(6)(E).)

The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question and, within the bounds of the law, each consumer’s particular needs must be met. (See, e.g., Code §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer’s participation in the community. (Code §§ 4646.5, subd. (2); 4648, subd. (a)(1) &

³ All statutory references are to the Welfare and Institutions Code, except where indicated.

(a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

“‘Services and supports for person with developmental disabilities’ means specialized service and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. . . . The determination of which services and supports are necessary shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer’s family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, . . . domiciliary care, special living arrangements, . . . protective and other social and sociolegal services, . . . advocacy assistance”

4. Services provided must be cost effective (Code § 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., Code §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) A fair reading of the law is that a regional center is not required to meet a consumer’s every possible need or desire, in part because it is obligated to meet the needs of many children and families.

One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (Code § 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (Code § 4651); and to utilize innovative service-delivery mechanisms (Code §§ 4685, subd. (c)(3), and 4791).

5. An IPP is developed through a collaborative effort involving the regional center and the consumer and/or the consumer’s representative(s), and others, collectively referred to as the interdisciplinary team (or ID Team). It was the intent of the Legislature that persons with diverse skills and expertise were to serve on the ID Team. They were intended to confer, deliberate, and decide what should be included in the consumer’s IPP. The ID Team may not abdicate its role nor may it ignore its duty owed not only to the consumer but also to the IPP process.

The IPP is prepared for the consumer by identifying necessary services and supports. The service agency must allow the consumer and his parents to participate in

developing the IPP.

Assessments must be conducted by qualified individuals and performed in natural environments whenever possible. Information must be obtained from the consumer, the consumer's parents and other family members, friends, advocates, any providers of services and supports, and any other interested agencies. The assessment process must reflect an awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family. Claimant and his parents have the reciprocal obligation to assist the Service Agency in meeting its mandate. No consumer should benefit by withholding information or by refusing to cooperate with the regional center, even if such conduct is well intentioned.

The regional center is required to prepare a plan identifying the services and supports a consumer needs to meet the goals and objectives identified by the ID Team, and determine whether those services and supports are to be purchased by the regional center, obtained from generic agencies, or provided from other sources. Claimant and his parents have the right to provide the Service Agency with input into the selection of the providers of those services and supports.

6. It is necessary for the participants in the IPP process to cooperate with each other. Section 4646 specifically provides that IPP's "shall be prepared jointly by the planning team." That section further provides that "decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's IPP and purchased by the regional center . . . shall be made by agreement between the regional center representative and the consumer" or his representatives. It is not the intention of the Legislature to have IPP programming and implementation of that programming decided unilaterally, either by a consumer or his representatives or by the regional center. The fact that Claimant's parents have chosen a particular program or service or provider, is an insufficient basis upon which to compel the Service Agency to fund that choice. It was not the intent of the Act to extend to a consumer or his parents the sole discretion or an unlimited unilateral authority over programming choices. Rather it is the intent to assure that consumer and family choices and preferences are taken into consideration and made a part of the consumer's IPP if all other requisites are met.

7. It must be understood both by the parents and the Service Agency that a balance of reasonableness and cooperation must be maintained when seeking to identify and implement the service needs of Claimant. The Lanterman Act requires that all purchases of services be secured for, and calculated to meet the needs of, the consumer. Consumer preferences can not relieve the regional center from its obligation under the Lanterman Act to administer the Act and expend public funds in a program-effective and cost-effective manner. Administering the Act as intended by the Legislature includes properly assessing, identifying, and providing for specifically identifiable services, in a manner which allows

measurement of the effectiveness of those services against agreed-upon goals and objectives. Because it is so important that all services provided are appropriately calculated to meet a consumer's needs as planned, it is imperative that there exists the highest degree of cooperation from all ID Team participants.

8. Claimant and his parents have the right to provide the Service Agency with input into the Service Agency's selection of the providers of services, consistent with section 4648, subdivision (a)(6). Claimant and his parents do not have the right to dictate what decisions the Service Agency must make. If Claimant or his parents believe the Service Agency has made a bad decision, they have the right to appeal.

The legislation anticipates a collaborative effort. Although a consumer and the family are empowered with important rights, there are also responsibilities that the family must shoulder. A person who seeks benefits from a regional center must bear the burden of providing information, submitting to reasonable exams and assessments, and cooperating in the planning process. (See Civil Code section 3521: "He who takes the benefit must bear the burden.") Of course, parents can refuse to do anything that they feel works to the detriment of their children. If services cannot be effectively delivered, monitored, and measured against goals and objectives, the regional center may be under no obligation to provide those services to a consumer. In other words, if a consumer or his parents do not agree to the services offered by a regional center, they are free to decline the offer and obtain services elsewhere—however, the regional center may have no obligation to pay for such services.

9. The eligibility to receive a service is a prerequisite to the obligation of the Service Agency to provide the service or pay for it later. With respect to legal fees and court costs associated with Claimant's conservatorship proceedings, it is noted that the proceedings had been commenced and finished, and the fees already paid by Claimant's parents, before there was any request for payment by the Service Agency.

10. Claimant's parents have cited to no legal authority requiring the Service Agency to pay legal fees for a consumer. As noted in Legal Conclusion no. 3, "advocacy assistance" is listed as an available service in Code section 4512. However, this does not mean that legal fees and costs will automatically be paid. It could include legal counseling, referral to free or low cost legal services, or other assistance. Code section 4433 requires the Department of Developmental Services to contract for consumer's advocacy services (so as to avoid a conflict of interest.) For these purposes, the Department has contracted with Protection and Advocacy, Inc. There was no evidence that Claimants' parents' sought or obtained a consultation with Protection and Advocacy, Inc. Further, "advocacy assistance" is a service potentially available to a consumer and not, necessarily, to a consumer's family and it cannot be concluded on this record that the interests of Claimant and of his parents in the

conservatorship proceedings were identical.⁴

11. Here, Claimant's parents unilaterally decided to pursue conservatorship proceedings, and there was no evidence that they consulted with the Service Agency concerning that decision or submitted a prior request for funding or assistance. The failure of the parents to make a direct request for funding prior to starting the legal proceedings or to seek agreement of the Service Agency to file the legal proceedings violates the intent of the Lanterman Act in its requirement that the parties consult with each other in an effort to arrive at joint decisions. To have such services or placements funded with public funds through the Service Agency, the Act requires such service acquisition decisions be made jointly. Such decisions must include the participation of the Service Agency. Under the circumstances here, where there was no such consultation or agreement, no reimbursement shall be ordered.

12. The Service Agency has taken all actions that are required to seek placement of Claimant at FDC, and the fair hearing process is not the correct procedure to address the actions of SCRP or their recommendation that resources other than a developmental center be utilized for Claimant's residential care.

13. The only authority referenced anywhere in the evidence for commitment to a Department of Developmental Services facility is a petition filed under Code section 6500 (see footnote 2) for commitment of a mentally retarded person. Under that section, such petitions are filed by either the county district attorney or the county counsel. Under Code section 6502, among the people and entities who may ask the county district attorney or the county counsel to file such a petition are the parent or conservator of the person or the director of a regional center. Therefore, it is not necessary for Claimant's parents to obtain an order directing the Service Agency to file the petition—they have the authority themselves, as Claimant's parents and conservators, to request that the petition be filed.⁵ Nor have Claimant's parents cited any authority that would require the Service Agency to request that a commitment petition be filed for Claimant. Under these circumstances, there is no basis to issue an order to the Service Agency to request that a commitment petition be filed for Claimant.

14. The Act requires placement of a consumer in the least restrictive setting. And sections 4418.25 and 4418.3 require the regional centers to attempt to move residents of

⁴ Under Probate Code section 1823, subdivision (b)(6), a proposed conservatee has the right to have legal counsel appointed by the court if he is unable to afford counsel.

⁵ Of note, Code section 6506 allows placement of the mentally retarded person, pending the hearing, in charge of a parent or conservator or in a state hospital or county psychiatric hospital. Prior to such placement, "the regional center and the developmental center, if applicable, shall recommend to the court a suitable person or facility to care for the alleged mentally retarded person."

developmental centers into the community for services and to “deflect” individuals from admission to developmental centers if possible. Here, SCRP has suggested that Claimant be placed in an environment less restrictive than a developmental center, and the Service Agency has suggested placements that are less restrictive to which Claimant’s parents will not agree. As the court is required to seek recommendations from the regional center and developmental center before ordering placement pending a hearing on a commitment petition, there is an insufficient factual basis to order the Service Agency to file a petition to place Claimant at FDC.

15. Claimant’s parents submitted no evidence of any costs for supportive services that have accrued or will accrue that are their responsibility to pay. Therefore, there is no factual basis on which to order the Service Agency to reimburse Claimant’s parents for the cost of supportive services until completion of the placement of Claimant at the Fairview Developmental Center.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that:

1. The Claimant’s appeal of the decision of the Service Agency to not reimburse Claimant’s parents for costs incurred in the conservatorship proceedings is denied.
2. The Claimant’s request for an order that the Service Agency place Claimant at the Fairview Developmental Center is denied.
3. The Claimant’s request for an order that the Service Agency reimburse Claimant’s parents for the cost of supportive services provided to Claimant and paid for by his parents until he is appropriately placed is denied.

Dated: March 22, 2007.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

Notice: This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.